

MINUTES

TENNESSEE BOARD OF MEDICAL EXAMINERS

November 15 and 16, 2005

The meeting was called to order at 8:50 a.m. in the Cumberland Room, Ground Floor of the Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37247-1010, by President Dr. David Cunningham. Other members present were: Drs. Allen Edmonson, Subhi Ali, Michael Zanolli, Keith Lovelady, Charles White, Sr., Mitchell Mutter, Barbara Engelhardt, Mr. Mark Brown, Ms. Nina Yeiser and Ms. Mary Johnson. Staff present included: Rosemarie Otto, Executive Director, Dr. Larry Arnold, Medical Director, Marsha Arnold, Unit Manager, Sandra Powell, Board Administrator and Mr. Robert Kraemer, Advisory Attorney.

Minutes

Minutes from the September 20 and 21, 2005 meeting were reviewed. Dr. Edmonson made a motion to accept the minutes and Ms. Yeiser seconded the motion. The motion carried.

Ratification of Licenses

New, reinstated, failed to renew and voluntarily retired licenses for Medical Doctors, Medical X-Ray Operators, Athletic Trainers, Physician Assistants, Committee on Clinical Perfusionists, Acupuncture Committee were reviewed. Dr. White made a motion to ratify the approval of licenses. Ms. Yeiser seconded the motion. The motion carried.

New Applicant Interviews

Stephen Cirelli, MD-Dr. Cirelli is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Cirelli's application file for the Board. Dr. Cirelli is on probation in New York and North Carolina. Dr. Arnold stated to the Board that if a license is granted, that license should be placed on probation for the duration of the New York probation and he should be required to complete the record-keeping course at Case

Western Reserve. Ms. Yeiser made a motion to accept Dr. Arnold's recommendations and Dr. Edmonson seconded the motion. The motion carried unopposed.

William Douglas Hobbs, MD- Dr. Hobbs is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Hobbs' application file for the Board. Dr. Hobbs plans to work in family medicine. In 1994, Dr. Hobbs' Montana license was placed on voluntary suspension. Dr. Hobbs' license was subsequently reinstated. Dr. Hobbs' Michigan license was later reprimanded by the Michigan Board for failure to report the Montana discipline. Dr. Mutter made a motion to grant Dr. Hobbs a license and Dr. Zanolli seconded the motion. The motion carried.

Robert E. Ross, Jr., MD- Dr. Ross is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Ross' application file for the Board. Dr. Ross has had a problem with alcohol dependence. Dr. Roland Gray, Medical Director for the Tennessee Medical Foundation spoke on behalf of Dr. Ross. Dr. Gray stated that Dr. Ross is under a five year contract. Dr. Engelhardt made a motion to grant Dr. Ross a license contingent upon a five year contract with TMF. Ms. Yeiser seconded the motion. The motion carried.

Reinstatement Interview

Orville J. Duncan, MD- Dr. Duncan is applying for reinstatement of his Tennessee medical license. Dr. Arnold stated that Dr. Duncan appeared before the Board on May 17, 2005 and was granted an Administrative license. Dr. Duncan wants to be able to practice without limitations on his medical license and did not agree with the website's wording regarding the Administrative license. Dr. Cunningham suggested rephrasing the Administrative license to say restricted to clinical diagnostic practice of medicine without the authority to treat. Dr. Ali made a motion to grant Dr. Duncan reinstatement with limits restricted to clinical diagnosis without the authority to treat. Ms. Johnson seconded the motion. Mr. Brown abstained. The motion carried.

James Keith Menees, MD- Dr. Menees is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Menees' application file for the Board. Dr. Menees has not practiced medicine since 2003 for health-related issues that necessitated the medically-supervised use of narcotics. Dr. Roland Gray, Medical Director for the Tennessee Medical Foundation spoke on behalf of Dr. Menees. Dr. Gray informed the Board that Dr. Menees has a five year contract with TMF and is being followed by Roger Cicala, MD. The Board suggested a lifetime contract with TMF. Dr. Engelhardt made a motion to grant Dr. Menees a license contingent on a lifetime contract with TMF. Dr. Ali seconded the motion. The motion passed.

Declaratory Order

The Board received and reviewed a petition for declaratory order submitted by the Tennessee Hospital Association by and through its legal counsel, Mr. William Hubbard. The purpose of the petition was to have the Board's office based surgery rules declared

invalid because the THA does not believe the Board has statutory authority to promulgate the rules. Mr. Hubbard was recognized by the Board's chair, David Cunningham, MD for the purpose of presenting oral argument. Thereafter, the chair recognized Robert Kraemer for the purpose of rebuttal on behalf of the State. The Board received and reviewed the State's written rebuttal which supported the Board's authority to promulgate the rules and further asked the Board to set the matter for a contested case hearing. Dr. Ali made a motion to hold a contested case hearing for the purpose of creating a record likely to be reviewed by Chancery Court. The motion was seconded by Ms. Johnson. All members voted in the affirmative. On November 16, 2005, a quorum of the Board then agreed to hold the contested case on January 24, 2006 beginning on or around 1:00 p.m.

Rule Action

Jerry Kosten, Rules Coordinator, informed the Board a rulemaking hearing was held that morning regarding letters of recommendation, revisions to the Professional Corporations and the Professional Limited Liability Corporations' rules, revisions to the x-ray operator requirements. The Board's decision was to amend the rule to add six months submission of recommendation letters. Dr. Edmonson made a motion to adopt the rule as amended and Dr. White seconded the motion. Following a roll call vote, the motion was adopted by unanimous vote.

Mr. Kosten reviewed the rules previously approved by the Committee on Physician Assistants and the Committee for Clinical Perfusionists. Dr. White made a motion to adopt the rule and Dr. Mutter seconded the motion. Dr. Zanolli had concerns regarding the Physician Assistants' advertising rules because their rules do not require them to disclose who their supervising physician is, yet we are requiring the medical doctors to reveal who they supervise who might be doing the procedures. Drs. Zanolli and Ali wanted to table the rules until the Committee on Physician Assistants had an opportunity to consider and amend their rules. Currently Rule 0880-3-.20 controls the advertising of Physician Assistants and states only that "fraudulent, misleading or deceptive advertising is prohibited." Dr. White withdrew his motion and Dr. Mutter withdrew his second. Dr. Zanolli made a motion to accept the remaining rules, but to table the advertising rules and further to recommend to the Committee on Physician Assistants that they amend their rules to require that any advertising identify their proctors/supervising physician. The motion was seconded by Dr. Ali. Mr. Brown opposed the motion. After a roll call vote, the motion was adopted by unanimous vote.

Mr. Kosten stated a rulemaking hearing was held August 1, 2005 regarding criminal background checks for the Clinical Perfusionists. Mr. Kosten stated no one attended the hearing and there were no comments. Dr. Edmonson made a motion to adopt the rule and Dr. White seconded the motion. A roll call vote was conducted and the motion adopted by unanimous vote.

The Board was asked to consider authorizing a rulemaking hearing for the purpose of amending its office based surgery rules. The proposed amended rule would bar the use of

any operating room established under the Board's office based surgery rules by anyone other than the physician or physician's group in whose practice the operating room was established. Mr. Kosten reviewed an additional proposed amendment to the advertising rules as they pertain to the advertising of procedures performed at remote locations (those locations other than the physician's primary practice setting). The proposed amendment would require in the body of the advertisement, the name of the physician, any board certification or specialty and whether he or she is available on site. With regard to supervising physician extenders, a physician supervising or offering to supervise allied health professionals must have an active unencumbered license. Dr. Edmonson made a motion to adopt the amendment and send to rulemaking hearing. Dr. Zanolli seconded the motion. The motion carried unopposed.

The Board was also asked to consider authorizing a rulemaking hearing to consider a rule that would make it unprofessional conduct for a physician to refuse or consistently fail to sign a certificate of death in a timely manner. Dr. White made a motion to authorize a rulemaking hearing and Dr. Mutter seconded the motion. The motion carried.

Discussion

Ms. Sharon Leinbach, Tennessee State Registrar and Director of Vital Records, addressed the Board concerning physicians signing death certificates in a reasonable amount of time. Ms. Leinbach is asking that the certificates be signed within twenty-four (24) hours after death. The Board's suggestion was to include the information regarding death certificates on the newsworthy section of the internet and in the newsletter.

Dr. Edward McDonald, member of the Medical Lab Board and a pathologist at St. Thomas Hospital addressed the Board on behalf of the Tennessee Society of Pathologists regarding Public Chapter 715 of 2004. Dr. McDonald referred the Board to a letter sent to them by Dr. J. Cameron Hall, President of the Tennessee Society of Pathologists. The letter concerned disclosure of anatomic pathology billings and asked how the Board apprised licensed practitioners and consumers of the new statute and how to report violators. Dr. McDonald stated that there had not been a high level of compliance by practitioners. Ms. Otto stated since the Board is complaint driven, it could not take action until a complaint had been made. She asked Dr. McDonald if he or other members of TSP had the names of practitioners violating the new statute. He said that members of TSP did know of specific individuals. When asked if he would provide those names to the Department for the purpose of beginning the complaint process, Dr. McDonald declined. She went on to say information regarding the statute would be placed on the Board's website under noteworthy and in the next issue of the newsletter.

The Board discussed and considered legislation requiring physicians performing office based surgery to report medical errors to the Department of Health through the Department's medical error reporting system. Mr. Kraemer provided the Board with a proposed draft of legislation for their approval. Mr. Kraemer informed the Board that if the decision is to adopt legislation regarding medical errors, he suggested amending the

rule. Dr. Edmonson made a motion to approve the amendment and Ms. Yeiser seconded the motion.

Ms. Otto reviewed the policy regarding unlicensed practice of x-ray operators in a doctor's office for the Board. This policy would give unlicensed x-ray operators a ninety day grace period to obtain certification before referral to OGC. Dr. Zanolli made a motion to adopt and Dr. Edmonson seconded the motion. The motion passed.

The Board discussed the appointment of three members for the standing Office Based Surgery Committee. The Board adopted as its standing committee Drs. Ali, Zanolli, Engelhardt and Eckles (an original member of the committee and recently reappointed member of the Board).

The Board discussed legislation regarding administrative licenses. Mr. Kraemer submitted proposed legislation for the Board to review. Dr. White made a motion to submit legislation for administrative licenses and Dr. Mutter seconded the motion. The motion passed.

Reports

Budget Report

The budget report was reviewed by the Board. Ms. Otto stated that the Board continues to have a surplus and even though certain high ticket items are on the horizon, no shortfall is expected.

Director's Report

Ms. Rosemarie Otto reviewed her report for the Board. Ms. Otto informed the Board that the rules for office based surgery became effective October 17, 2005 and a postcard was developed informing licensees of the rule. Ms. Marsha Arnold gave her manager's report and informed the Board that the on-line renewals were 603. Dr. White requested a report be compiled of the total number of active licenses for all professions to see how other Boards' activities are compared to the Medical Board.

Investigation Report

Ms. Denise Moran, Director for the Bureau of Investigation gave her report. Ms. Moran informed the Board that orientation was beginning for the new investigators who will be replacing those who are retiring. Dr. Zanolli had questions concerning the investigative process which were addressed by Ms. Moran.

Disciplinary Report

Ms. Lea Phelps, Disciplinary Coordinator reviewed her report for the board. Ms. Phelps informed the Board of how many physicians are being monitored, the number of suspensions, probations and total amount collected in civil penalties.

OGC Report

Mr. Robert Kraemer reviewed his OGC report for the Board and stated there are six (6) rules in the Attorney General's Office. The rules are:

1. Radiologic Assistant, Office Based Surgery and X-Ray Tech Amendments
2. Radiologic Assistants and Examination
3. Criminal Background Checks
4. 2005 Legislation and Densitometry
5. Titles and Special Volunteer Licensure
6. MPLLC, X-Ray and Reference Letters

“Noteworthy” section of the internet

The Board designated putting information regarding the signing of death certificates on the internet.

Old Business

The Board directed their executive director to schedule a meeting between the Board and Ms. Shirley Corey, General Counsel for the Office of General Counsel at its January, 2006 meeting for the purpose of receiving a progress report.

Adjourned at 3:30 p.m.

Disciplinary Action

November 16, 2005

Cumberland Room

8:30 p.m.

Panel: Brown, Cunningham, Mutter, White

Consent Orders

Theodore Anfinson, MD-Dr. Anfinson was neither present nor represented by legal counsel. Ms. Laurie Doty represented the State. The proposed Consent Order was handed out to the panel for review. Dr. Anfinson is charged with violating TCA 63-6-

214(b) (20). The Iowa Board of Medical Examiners received information that indicated Dr. Anfinson, a practicing psychiatrist, engaged in an inappropriate sexual relationship with a former patient. Dr. Anfinson subsequently married the patient. On April 3, 2003, the Iowa Board charged Dr. Anfinson with engaging in unethical conduct or practice harmful or detrimental to the public when he violated appropriate professional physician/patient boundaries when he engaged in an inappropriate sexual relationship with a former patient. The proposed Consent Order stated that Dr. Anfinson agreed to the same terms and conditions under which he holds an Iowa license. Dr. Anfinson's Tennessee medical license shall be reinstated and placed on indefinite probation. Dr. Anfinson must contact Deb Anglin, Coordinator, Monitoring Programs, and Iowa Board of Medical Examiners to establish a monitoring program. Dr. Anfinson shall fully comply with all recommendations made by the sexual misconduct and substance abuse assessment programs and utilize the Principles of Medical Ethics, Staff Surveillance Forms and Patient Satisfaction Surveys in his practice. Dr. Anfinson shall not consume alcohol or use any controlled or prescription drug in any form unless the drug has been prescribed for his use by another duly licensed treating physician or other qualified treating health care provider. Dr. Anfinson must make arrangements to submit to the Iowa Board's drug screening program. Dr. Anfinson must submit to the Iowa Board for approval, the name of a physician who regularly observes and/or supervises him in a practice setting to serve as his worksite monitor. Dr. Anfinson must file quarterly reports with the Iowa Board attesting to his compliance with all the terms and conditions and appear before the Iowa Board or a Board committee annually or upon request. Dr. Mutter made a motion to accept the proposed Consent Order and Mr. Brown seconded the motion. The motion passed unopposed.

Contested Case Hearing

Curtis Buchheit, MD-The hearing in the matter of Curtis Buchheit, MD came before a panel of the Board of Medical Examiners (David Cunningham, MD, Charles White, Sr., MD, Mitchell Mutter, MD and Mark Brown, Esq., Consumer) on November 16, 2005. Mary M. Collier, Administrative Law Judge presided. The State was represented by Ms. Laurie Doty, Deputy General Counsel of the Office of General Counsel and Mr. Garrett Asher, Esq., of the Nashville Bar represented Dr. Buchheit. Judge Collier listed the documents contained in the technical record and made brief opening remarks. Ms. Doty and Mr. Asher each gave their opening statements to the Board with Ms. Doty publishing the State's Notice of Charges. Dr. Buchheit is charged with violation of TCA Sections 63-6-214(b)(1), 63-6-214(b)(12), 63-6-214(b)(13) and 63-6-214(b)(14). After the Board read the Notice of Charges, Ms. Doty called Dr. Buchheit as her first witness.

The panel adjourned at 3:30 p.m. Judge Collier then took up scheduling matters and ordered both sides to be prepared to hear the matter at each and every board meeting until the matter concludes.

The matter will be continued on January 25, 2006.

Magnolia Room

Panel: Yeiser, Lovelady, Zanolli, Engelhardt

Contested Case Hearings

John T. Hancock, MD-Dr. Hancock was present and represented by legal counsel, Ms. Lisa Hatfield. Mr. Thomas Miller represented the State. The Honorable Marion Wahl, Administrative Law Judge presided. Mr. Miller and Ms. Hatfield each gave their opening statements to the panel. Mr. Miller presented the Notice of Charges to the panel for review. Dr. Hancock is charged with violating TCA 63-6-214(b)(1), 63-6-214(b)(2), 63-6-214(b)(3), 63-6-214(b)(4), 63-6-214(b)(5), 63-6-214(b)(10), 63-6-214(b)(11), 63-6-214(b)(14), 63-6-214(b)(17), and 63-6-214(b)(18). On March 7, 2002 and March 11, 2002, Dr. Hancock committed the offense of attempted Forgery by knowingly attempting to pass a writing which purported to be a legitimate prescription for Oxycontin authorized by a licensed medical doctor. According to an Order of Deferment and Probation entered on December 16, 2003, Dr. Hancock pled guilty to two (2) Class A Misdemeanors of Attempted Forgery in the General Sessions Court of Hamblen County, Tennessee, at Morristown. Dr. Hancock was sentenced to serve eleven (11) months and twenty-nine (29) days for each misdemeanor count to run consecutively. The sentence was suspended and Dr. Hancock was placed on supervised probation for a period of two (2) years. Dr. Hancock was ordered to participate in a supervised rehabilitation program, voluntarily surrender his United States Drug Enforcement Administration (DEA) Uniformed Controlled Substances Registration Certificate and agreed not to prescribe any controlled substances for a period of two (2) years. On May 18, 2004, Dr. Hancock entered into an Agreed Order with the Board and agreed to the following:

- a. Tennessee license be placed on Probation effective the date of entry of the Order and remain on probation for a period of five (5) years.
- b. Dr. Hancock must enter into a contract with the Tennessee Medical Foundation and maintain advocacy for the duration of the period of probation. Dr. Hancock shall not be required to travel outside the physical boundaries of Hamblen County, Tennessee, in order to participate in any required drug testing.
- c. Dr. Hancock must be evaluated by the Vanderbilt Comprehensive Assessment Program for Professionals within thirty (30) days of the Order.
- d. Dr. Hancock must pay a maximum of one thousand dollars (\$1,000.00) in costs.
- e. After two (2) years, Dr. Hancock shall be eligible to petition the Board for a modification of the Agreed Order in order to lift the probation.

Mr. Miller called Dr. Hancock as a witness. Dr. Hancock answered questions concerning his abuse of Oxycontin. Dr. Hancock explained the problems he encountered and reasons for the delay in getting the contract with TMF and completing the course at Vanderbilt. Dr. Hancock stated he was on the waiting list at Vanderbilt, in which Mr. Miller stated he had proof that will show that Dr. Hancock did not contact Vanderbilt until June, 2005. Dr. Roland Gray, Medical Director for the Tennessee Medical Foundation was called as a

witness. Dr. Gray stated a letter was sent to Dr. Larry Arnold, Medical Director for the Medical Board reporting Dr. Hancock's positive drug screen. Dr. Arnold was called as a witness followed by Vince Parrish, Field Coordinator for the Tennessee Medical Foundation. Ms. Hatfield followed with her cross-examination. Closing statements were given by Mr. Miller and Ms. Hatfield.

The panel deliberated. Dr. Zanolli made a motion to accept Finding of Facts #17 a, b, c, d, e and Dr. Engelhardt seconded the motion. The motion carried. Dr. Engelhardt made a motion to accept the Finding of Facts # 18 and 18a and Dr. Lovelady seconded the motion. Dr. Zanolli opposed. The motion carried. Dr. Zanolli made a motion to accept Finding of Facts #19 and Dr. Engelhardt seconded the motion. The motion passed. Dr. Zanolli made a motion to accept Finding of Facts #20 and Dr. Engelhardt seconded the motion. The motion carried. Dr. Engelhardt made a motion to accept the Finding of Facts #21 and Dr. Lovelady seconded the motion. The motion carried. Dr. Zanolli made a motion to add as #22 of the Finding of Facts that Dr. Hancock must successfully maintain advocacy with TMF for the duration of the period of probation. A second was followed by Dr. Engelhardt. The motion passed. Dr. Engelhardt made a motion to accept Causes of Action #22, 23, 24, 26 and omitting #25. Dr. Zanolli seconded the motion. The motion carried. Dr. Zanolli made a motion to omit #27 and #28 of the Causes of Action and Dr. Engelhardt seconded the motion. The motion passed. Dr. Engelhardt made a motion to omit #29 of the Causes of Action and Dr. Zanolli seconded the motion. The motion carried. Dr. Zanolli made a motion to omit #30 of the Causes of Action and Dr. Lovelady seconded the motion. The motion carried. Dr. Zanolli made a motion to omit #31 of the Causes of Action and Dr. Engelhardt seconded the motion. The motion carried. Dr. Zanolli made a motion to reopen proof and call Dr. Gray back as a witness. Dr. Engelhardt seconded the motion. The motion passed. Dr. Zanolli asked Dr. Gray to explain the difference between 12 Step Program and Rehabilitation Program. After Dr. Gray's explanation, the panel returned to deliberating. Dr. Lovelady made a motion to suspend the Tennessee medical license of Dr. Hancock for four (4) months, place a five year restriction on his DEA privileges, require that he maintain the advocacy with TMF and enter a program guided by the TMF and their recommendations. Dr. Engelhardt seconded the motion. The motion passed. Dr. Zanolli made a motion to access the costs of the hearing and Dr. Lovelady seconded the motion. The motion carried. The policy statement was read and the reason the actions were taken was to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Zanolli made a motion to accept the policy statement and Dr. Engelhardt seconded the motion. The motion passed.

Licensure Denial Appeal

James McClendon, MD-Dr. McClendon was present and represented by legal counsel, Mr. Herbert Adams, of the Georgia Bar and Ms. Lisa Hatfield. Mr. Shiva Bozarth represented the State. The Honorable Marion Wahl, Administrative Law Judge presided. Dr. McClendon's reinstatement application for medical license was denied by the Board's medical director and ratified by the Board on March 15, 2005. Dr. McClendon's Georgia license was revoked. Dr. McClendon was convicted of a felony and excluded

from Medicare/Medicaid for twenty (20) years. Dr. McClendon is charged with violating TCA 63-6-214 (b) (20). Mr. Adams gave his opening statement followed by Mr. Bozarth. Dr. McClendon was called upon as a witness by Mr. Adams and was cross-examined by Mr. Bozarth. Ms. Yeiser informed Dr. McClendon that Tennessee consistently mirrors other states' action. After the Judge called for a short recess, he decided to reset the case for a later date.

Adjourned at 3:30 p.m.

Dr. Allen S. Edmonson, Secretary

Date